

DIRECTIVE NUMBER 400-04-13

DATE: July 1, 2013

TO: Department of Labor Special Investigators

FROM: Lana Gordon, Secretary of Labor

SUBJECT: Domestic Violence

I. Purpose

The purpose of this policy is to establish guidelines for response to domestic violence calls in compliance with K.S.A. 22-2307, and to do so maximizing the safety of victims, officers, and others immediately present.

Law enforcement staff members of the Kansas Department of Labor (KDOL) are not normally first responders to public calls for law enforcement assistance. However, KDOL staff may find themselves assisting local law enforcement officers or agencies responding to or investigating a domestic violence case. Exceptional circumstances may require a KDOL officer to conduct themselves as a first responder to a domestic violence incident. The following policies provide guidance for KDOL staff in both instances.

KDOL law enforcement officers are expected to do the following:

- Afford protection and support to adult and child victims of domestic violence;
- Promote the safety of law enforcement personnel responding to incidents of domestic violence;
- Establish arrest and prosecution as a preferred means of response to domestic violence;
- Complete thorough investigations and effect an arrest of the person that the officer has probable cause to believe committed a crime or offense involving domestic violence unless the person's actions were in defense of persons or property;
- Take appropriate action for any violation of permanent, temporary, or emergency orders of protection; and
- Provide victims or witnesses of domestic violence with support and assistance through cooperative community efforts in order to prevent further abuse and harassment, or both.

II. Policy Statement

It is the policy of the Kansas Department of Labor to provide a proactive, pro-arrest approach in responding to domestic violence. The primary focus shall be on the safety of the victim, officers, and others in proximity of the crime, followed closely by perpetrator accountability. The law

enforcement officer should follow all policies and procedures of this agency to complete a thorough investigation and analysis of the complaint with the goal of arresting the person(s) committing an act of domestic violence and who were not acting in defense of persons or property.

III. Definitions (pursuant to K.S.A. 2012 Supp. 21-5111):

Family or household member means persons 18 years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time. Family or household member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.

Dating relationship means a social relationship of a romantic nature. In addition to any other factors the court deems relevant, the trier of fact may consider the following when making a determination of whether a relationship exists or existed: Nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and time since termination of the relationship, if applicable.

Domestic violence means an act or threatened act of violence against a person with whom the offender is involved or has been involved in a dating relationship, or an act or threatened act of violence against a family or household member by a family or household member. Domestic violence also includes any other crime committed against a person or against property, or any municipal ordinance violation against a person or against property, when directed against a person with whom the offender is involved or has been involved in a dating relationship or when directed against a family or household member by a family or household member.

Domestic violence offense means any crime committed whereby the underlying factual basis includes an act of domestic violence.

Defense of persons or property means an act by a person as authorized by K.S.A. 21-5222, 21-5223, 21-5224, 21-5225, 21-5230, and 21-5231.

IV. AUTHORITY TO ARREST: K.S.A. 22-2401 provides the legal authority and parameters guiding all arrests by law enforcement officers. K.S.A. 22-2307(b)(1) further requires all Kansas law enforcement agencies to have a policy requiring an arrest without delay in any case of domestic violence as defined in K.S.A. 21-5111 whenever the requirements of K.S.A. 22-2401 are met, regardless of whether the crime is a misdemeanor or felony. All offenses within the Kansas Criminal Code (K.S.A. chapter 21) and violations of municipal ordinances will trigger mandatory arrest by law enforcement officers where, 1. probable cause of the offense or violation is found and there is probable cause the suspect committed the offense; 2. there is a qualifying relationship between the victim and the offender (as defined at K.S.A. 21-5111); and 3. there is no legal use of force in defense of persons or property.

FELONY VS. MISDEMEANOR CHARGES: The authority to arrest without a warrant for domestic violence offenses exists regardless of whether the charge is a misdemeanor or felony, provided probable cause a crime was committed and probable cause the person arrested committed the crime exists. This authority is provided in K.S.A. 22-2307(b) (1) combined with provisions of K.S.A. 22-2401(c). The arrest for crimes that are not domestic violence related discovered during the course of a domestic violence investigation are authorized only if the requirements of K.S.A. 22-2401 are met.

WHEN ARREST IS NOT REQUIRED: This authority does not require an officer to arrest either party involved in an alleged act of domestic violence when there is no probable cause to believe that a crime or offense has been committed or there is no probable cause that a particular person committed the crime. Such determination should be preceded by a thorough investigation.

MULTIPLE ARRESTS: Both parties involved in an alleged act of domestic violence should be arrested only when a thorough investigation establishes probable cause each person committed a domestic violence crime and was not acting in defense of persons or property , or can otherwise be arrested under authority of K.S.A. 22-2401. The arrest of both parties simply because the information is inadequate to determine who was the aggressor and who was acting in defense of persons or property is not appropriate.

OPPOSING ALLEGATIONS: Authority to arrest is further clarified in K.S.A. 22-2307(b)(3) by directing law enforcement officers who receive complaints of domestic violence from two or more opposing persons, to evaluate each complaint separately to determine if there is probable cause that each accused person committed a crime or offense and their actions were not defense of persons or property.

V. Procedures

When a law enforcement officer determines there is probable cause a particular person has committed a domestic violence offense, the officer shall without undue delay arrest the person unless such person's actions were in defense of persons or property.

A. Law Enforcement Officer Procedures:

1. Initial Response

When dispatched to a domestic violence call, responding law enforcement officers should do the following:

- a. Follow all agency procedures and policies on response to, approach to, and field investigations of active violent crimes. This includes assuring identification and appropriate medical care of injured persons.
- b. Gather information from dispatch to help assess the situation and to enhance the safety of victims, officers and others present at the scene upon arrival.

- c. Use recording devices to capture statements made by suspects, victims and witnesses, if possible or available.
- d. Assure compliance with all agency policies and procedures for legal and safe entry to the scene. This may include forced entry under exigent circumstances to assure safety of victims and securing of evidence.
- e. Contact and document information from all witnesses and other persons who possess information helpful to the investigation and prosecution of any crime.
- f. Assure all persons involved in domestic violence and all family or household members present are accounted for and receive any needed medical attention.
- g. Follow all agency policies and procedures regarding the documentation of the allegations, investigation, and evidence collection, including the completion of the Standard Offense Report, Arrest Report, and related reports.
- h. If language barriers exist, follow agency policy and procedures to assure interpreter services are obtained if necessary. **Limit the use of family members only to obtain information of a nature critical to the safety of all parties involved, including the officers. Only use children as interpreters as a last resort and limited to exigent circumstances.**
- i. **DO NOT** make any statement that would discourage a victim from reporting an act of domestic violence and/or abuse; or threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage future requests for intervention by law enforcement personnel.

2. If a law enforcement officer is involved:

- a. Upon determining a domestic violence call appears to involve a law enforcement officer from any agency or jurisdiction, the dispatcher shall be notified and a supervisor requested if no supervisor is already on scene.
- b. Where the suspected offender is an executive level officer of the responding law enforcement officer's agency, outside agency assistance and investigation should be requested immediately.
- c. The investigation of the allegations will be conducted thoroughly and in a timely manner including accurate and complete documentation, collection of all evidence, and completion of all required reports. All officers of this agency will fully cooperate and assist an outside agency assigned to investigate or assist in investigation of the allegations.
- d. The fact one of the persons involved is a law enforcement officer will not influence the decision to arrest, the timeliness of an arrest, or the charges filed in the case.

3. If the suspect is not at the scene on arrival of the officers:

- a. Attempt to locate the suspect and provide information to other officers to assist in locating the suspect.
- b. If probable cause for arrest exists, regardless of whether the crime is a misdemeanor or felony, advise other officers of the probable cause and request the suspect be taken into custody if located.
- c. Officers shall stay alert and remain vigilant for possible return of the suspect.
- d. Request dispatch to prepare a suspect bulletin for distribution and to enter the person in the Kansas Hot Files if appropriate.
- e. Assure officers on future shifts are aware of the information and request to arrest the suspect.
- f. Follow agency policies and procedures to obtain a warrant for the suspect as soon as practical if the suspect has not been located.
- g. When the suspect is located, follow all agency procedures to assure the suspect has an opportunity to provide a statement of the details of the incident. It is critical the officer assure all legal requirements are met to allow such statements to be used in court. Investigate any new information or allegations provided by the suspect or collected during or after the arrest of the suspect. If appropriate, re-evaluate the probable cause for arrest and charging of the suspect. Be sure all bulletins, Kansas Hot File entries, or NCIC entries are cleared.

4. Follow-up Investigation

- a. Any information received from witnesses, victims, or suspects that cannot be fully investigated by the initial responding officers should be identified and investigated by detectives or other officers as provided in applicable agency policies and procedures. Such investigation shall be completed in a timely manner. Special urgency exists when additional investigation is necessary to establish probable cause or to obtain an arrest or search warrant.
- b. If the suspect has not been arrested once probable cause is established or an arrest warrant obtained reasonable efforts to locate the suspect should be on going. Special urgency exists if threats or other indications of continued attacks on the victim or others exists.
- c. All reports shall be completed and forwarded to the appropriate prosecutor's office as quickly as possible. This should include a request for the issuance of an arrest warrant or search warrant when appropriate.
- d. Subsequent to the initial forwarding of reports to the prosecutor, new information and additional reports shall be forwarded to the prosecutor as soon as possible. This is

especially critical when such information directly pertains to the probable cause of the alleged crime or arrest.

VI. Violation of Court Orders:

A. Protective Orders: Violation of a Protective Order (K.S.A. 21-5924) is *knowingly* violating one of the following:

- PFA – Emergency, Temporary and Final Protection from Abuse Orders issued pursuant to K.S.A. 60-3101 *et seq.*
- PFS – Temporary and Final Protection from Stalking Orders issued pursuant to K.S.A. 60-31a01 *et seq.*
- Criminal Case – Any no contact court order issued pre- or post-conviction in a criminal case
- Divorce – Any restraining order issued as part of a divorce proceeding
- CINC Case – Any restraining order issued in a Child in Need of Care case
- Out-of-State Order – Any similar order issued by any Indian Tribal Authority, U.S. Military, or U.S. Territory, or by any state within the U.S., including any municipalities therein (also known as Full Faith and Credit). See *Confirming Protection Orders* below.

B. When violation of a Protective Order is a domestic violence crime:

Violation of a Protection from Abuse Order (PFA) is a domestic violence offense unless the offender is under the age of 18 AND the PFA plaintiff and the PFA defendant have not engaged in a dating relationship. Other protective order violations may constitute a domestic violence offense if the violation meets the criteria in the definition of a domestic violence crime in Section II of this policy (e.g. if there is a qualifying relationship between the protected and restrained party, a violation of a protective/no contact order would be a domestic violence offense, unless the offender is under the age of 18 AND the PFA plaintiff and the PFA defendant have not engaged in a dating relationship).

C. When to arrest:

1. If the named respondent/defendant in such a protective order as listed above is in violation of a protective order and if the violation is determined to be a domestic violence crime, law enforcement officers shall arrest the respondent/defendant and proceed with the booking process.
2. If the named respondent/defendant in such a protective order as listed above is in violation of a protective order and if the violation is not determined to be a domestic violence crime, law enforcement officers should arrest the respondent/defendant and proceed with the booking process only if the criteria for arrest in K.S.A. 22-2401 is met.

D. Unserved Protection Orders:

While the named defendant on a protective order usually cannot be arrested or charged with violation of a protective order under K.S.A. 21-5924 if the defendant has not been personally served with the order, law enforcement officers should still offer assistance to the victim/plaintiff if a complaint is made and should work to have the defendant personally served with the order. Law enforcement officers should arrest on other charges if the criteria of K.S.A. 22-2401 is met, whenever possible (e.g. trespassing, intimidation of a witness etc.). PFA and PFS orders should be entered in NCIC by the Sheriff when they are issued by the District Court.

E. Confirming Protection Orders:

Law enforcement officers presented with a situation in which a PFA or PFS is claimed to exist, but a copy is not available to the law enforcement officers should take good faith steps to verify the existence of a protection order. This includes but is not limited to: NCIC; law enforcement records; Clerk of the District Court; and other sources in determining whether there is probable cause to believe a valid foreign protection order exists.

F. Enforcement of Protection Orders from Other Jurisdictions:

A foreign protection order is one issued by legal authority of a state or competent jurisdiction (e.g. Indian Tribal Authority, U.S. Military, or U.S. Territory) other than Kansas. A law enforcement officer, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a court of this state. Presentation of a protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid foreign protection order exists. The protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement. If a foreign protection order is not presented, a law enforcement officer of this state may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists. An officer and the officer's agency have immunity of liability in these enforcement actions if the arrest is made in good faith. (KSA 60-31b06)

VII. Incident Documentation Procedures:

- A. Officers will complete the Standard Offense Report and all supplements as required in agency policies and procedures, or as required by the Kansas Standard Offense Report Manual, regardless of whether an arrest is made.
- B. All reports or allegations of domestic violence shall be documented on the standard offense report even if it is determined there is no probable cause a crime was committed and even if no arrest is made.
- C. If no arrest is made due to the lack of probable cause, the report shall include all information supporting the lack of probable cause a crime was committed, the lack of

probable cause a particular person committed the crime, or supporting a legal use of force in defense of persons or property.

- D. A copy of the Standard Offense Report is required to be sent to the Kansas Bureau of Investigation even if no arrest is made.
- E. Officers will complete the Standard Offense Report and all supplements as required in agency policies and procedures, or as required by the Kansas Standard Offense Report Manual, when an arrest is made for violation of a protective order.

VIII. Victim Safety and Protection:

Law enforcement officers should make victim safety and protection a priority, recognizing the important role law enforcement officers play in supporting the safety of victims and enabling them to make informed decisions.

VIX. Information Provided to Victims:

A. Upon conclusion of the initial domestic violence investigation at the scene, officers should:

1. If suspect is arrested, inform the victim of the procedure for contacting jail personnel in order to determine when the suspect may be released from custody, in addition to requesting that jail personnel notify the victim prior to the suspect's release.
2. If the suspect is not arrested, inform the victim and explain why an arrest has not been made. If the suspect is still being sought, inform the victim of what steps will be taken and what actions the victim should take if contacted by the suspect or if the victim learns of the suspects whereabouts.
3. Assist the victim in reaching a safe location with essential clothing and supplies if the victim wants to leave the premises to ensure safety.
4. Provide the victim with the investigating officer's name and contact information.

B. Law enforcement officers shall provide the following information to victims of domestic violence as required by K.S.A. 22-2307:

1. Availability of emergency and medical telephone numbers, if needed;
2. The law enforcement agency's report number;
3. The address and telephone number of the prosecutor's office the victim should contact to obtain information about victims' rights pursuant to K.S.A. 74-7333 and K.S.A. 74-7335 and amendments thereto;

4. The name and address of the crime victims' compensation board and information about possible compensation benefits;
5. Advise the victim that the details of the crime may be made public;
6. Advise the victim of such victims' rights under K.S.A. 74-7333 and K.S.A. 74-7335 and amendments thereto; and
7. Advise the victim of known available resources which may assist the victim.

Lana Gordon, Secretary of Labor
Signature on file

Rescissions: None	Expiration Date: Continuous
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